

REMARKS

Reconsideration of this application is requested. Claims 1-13 and 16-26 are presently pending in the application. Applicant wishes to enter the above amendments in the advance of the resumption of prosecution, whereby claims 1-9, 12, 13, 16-22 and 24 are canceled without prejudice, and claims 10, 23 and 25 are amended, so that claims 10, 11, 23 and 25-26 would remain. This amendment is being made to hasten the prosecution of the present application to coordinate with commercial activity with the product. The claims amendments proposed herein are taken from previously pending claims that have already been considered on the record, and particularly, seek to incorporate the limitations of claim 18 into claim 23, and to cancel the former claim, with the remaining amendments being of minor formal nature. As no new matter or new issues are believed to be presented by the proposed amendments, entry and consideration of the above amendments are believed to be appropriate, and are requested.

Additionally, applicant has become aware of further references that are properly placed on the record in compliance with applicant's duty under 37 CFR 1.56 and 1.97. Accordingly, a Second Supplemental Information Disclosure Statement is submitted herewith, that presents patent disclosures that have recently been placed of record in applicant's corresponding PCT and EP applications. A copy of the International PCT Publication is included and a copy of the supplemental Search Report received from the EPO is attached hereto. In addition, applicant includes prior Australian Design Registration AU 142894 S, to the applicant.

Of the references cited in both international search reports, Waddell et al. is already of record herein and is not listed in the Supplemental IDS. The remaining references cited in both reports are included in the attached IDS, and copies are attached where available. Of the references cited and provided, English translations of German Patent Disclosure No. DE 29600207, to Alten Geraetebau GmbH, and DE 19525308 A1 to Arnold Verladesysteme were not available. With regard to the remainder of the foreign language references, machine translations of each are included.

Applicant has reviewed the references presently submitted, and believes that none of them suggests or makes obvious the fender assembly that is recited in Claim 23, particularly as amended. Some of the references show only buffers or pads against which a vehicle rear bumper may rest when pulled up to a building. There is no disclosure of the paired sub-assemblies of claim 23 or an appreciation of the advantages of such a construction.

An example of an advantage of the assembly of the present invention is demonstrated in the instance where a truck is positioned against a loading dock, and contents are either being loaded or

unloaded on or from a particular side (i.e. driver's side or passenger's side) of the cargo area, the resulting shift in weight will cause that end of the cargo area to shift in vertical level. Devices as are shown and disclosed in Waddell, et al. and references corresponding to such construction, by virtue of their unitary construction, would not be able to accommodate the shift without strain and eventual damage and breakdown of the bumper assembly. By contrast, the sub-assemblies of the present invention operate independently of each other, and would not only be more durable, but would more smoothly manage the interaction between the loading dock and the truck rear bumper.

The undersigned would also like to thank Examiner Schwartz for the courteous telephone discussion had with respect to the above-identified application, and particularly with respect to the outstanding issue presented by the rejection based upon Applicant's corresponding Australian design patent specification. The undersigned indicated to the Examiner that it was Applicant's intent to submit a Declaration under 37 CFR §1.131, to establish that the subject matter of the present application had a date of invention that is earlier than that of the disclosed subject matter of the corresponding Australian Design specification. Such Declaration has been prepared and executed, and is submitted herewith, and is believed to obviate the rejections set forth in paragraph 3 of the outstanding office action.

Accordingly, claims 1-13 and 16-26 have been rejected under 35 USC §103(a), as unpatentable over applicant's Australian Design Registration No. AU 3125/02 in view of Waddell et al. '985 and Leone et al. '832. As the Declaration under 37 CFR 1.131 is believed to overcome and render unavailable for rejection, the subject Design Registration AU 3125/02, it is submitted that the rejection as stated herein is no longer tenable. Accordingly, withdrawal of this ground of rejection is believed to be in order, and is requested.

Claims 1-13 and 16-26 have also been rejected under 35 USC §103(a) as unpatentable over Waddell et al. in view of Leone et al. As this rejection may pertain to the claims if amended as proposed, and more generally, with respect to the relevance of the disclosures of the references in relation to the present invention, it is traversed.

The loading dock guard of Waddell, (1959), a reference about 50 years old, is said to "provide a protective guard for a dock or warehouse platform wherein the guard is slidably mounted to freely move up and down as the truck is loaded or unloaded to avoid it being twisted loose from its mountings" (col.1, lines 34-38).

Leone et al is directed to a problem that differs both from that of the present invention, as well as that considered by Waddell et al. Leone et al. is directed to the problem of the *replacement* of protective devices for *docked boats*. The protective member of Leone et al. is not designed to

move with the boat. In fact, it could not move downwards with the boat on an ebbing tide as finger 22 is immovable (it is “welded across the bottom of the H-beam”) – (please see column 2, lines 30-32 of Leone et al.). Applicant submits that the person of ordinary skill would not have been motivated to look to the teachings of Leone et al. for guidance, and would surely not abstract and adopt one of the concepts of the reference in exclusion of the other.

Even assuming *arguendo*, that the artisan turned to the teachings of Leone et al., the result would be to modify the protective member to render it vertical but immovable, and not vertical and reciprocable to accommodate vertically oriented movement of the vehicle. Simply stated, the vertical orientation of the fender of Leone et al. must be taken together with its functionality, as the two features are taught as inseparable parts of a design that is a solution to the particular problem faced by the patentees. Separation and selective adoption of one of the features could only arise from improper hindsight reconstruction motivated by the teachings of the present invention.

At the time the present invention was made, a person of ordinary skill in the art would not have had a reasonable expectation of success in modifying the necessarily large and cumbersome horizontal 1950's structure of Waddell et al. to the compact, improved system comprising the separate and independently movable sub-assemblies as defined in primary claim 23. There is no teaching in Waddell et al. of independent movable fenders, each having an associated guide track that is both vertical and oriented longitudinally with respect to the fender.

It is further submitted that it would not have been obvious to arrive at the present invention as defined in claim 23 because too much modification is required to the structures of the cited references. The person of ordinary skill in the art would not have found it obvious to: firstly, move the loading dock guard of Waddell et al. from a horizontal configuration to a vertical configuration and then, secondly, to rotate both of the now horizontally arranged bores through which the long rods or bolts 14 pass through 90 degrees from their now horizontal orientation to a vertical one (or alternatively, to delete one of the bores and to rotate the other of the bores to a vertical orientation).

Furthermore, with the Waddell et al. structure, the horizontal guard would generally engage the entire width of a truck's horizontal bumper. In contrast, the fender assembly of claim 23 is only contacted by a trailer or truck at a specific lateral location. In use, it is substantially perpendicular to the trailer or truck's bumper.

Therefore, in practice, it is advantageous to have two of the fender assemblies subject of claim 23 in laterally spaced apart positions. The person skilled in the art would not have found it obvious to rotate the single horizontal structure of Waddell et al. to a vertical position and then to make all of the modifications discussed above to make it functionally equivalent to the fender

assembly of claim 23 unless the person skilled in the art also would have thought to duplicate the structure to improve its functionality. In other words, a further inventive hurdle to the person skilled in the art would have been to realize that a vertically arranged fender assembly could be a step forward (the fender assemblies of claim 23 are best provided in pairs).

It is therefore submitted that the claims, as now amended, distinguish the present invention over the references of record and an allowance of the present patent application is respectfully solicited.

Respectfully submitted,

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ENCLOSURES: Declaration Under 37 CFR §1.131
Second Supplemental Information Disclosure Statement
Copy of Supplementary European Search Report